

Remarks

The Examiner has rejected claims 13-15 under 35 U.S.C. 102(b) as being anticipated by Anthony Conner (2000, US Patent Number 6,057,496). The Applicant respectfully traverses this rejection.

The Examiner correctly recites that the claims are drawn to a transgenic alfalfa plant comprising a nucleotide sequence encoding the antifungal protein of SEQ ID NO: 4 or a progeny thereof comprising the nucleotide sequence. It is also not disputed that the '496 patent teaches a transgenic alfalfa plant and the seed from the transgenic alfalfa plant (claim 14), and does not teach a nucleotide sequence encoding the antifungal protein of SEQ ID NO: 4. The Examiner incorrectly indicates that "the transgenic plant of the '496 patent inherently comprises an endogenous gene encoding the antifungal protein of SEQ ID NO: 4 given that the antifungal protein of SEQ ID NO: 4 is isolated from alfalfa plant. Therefore the reference teaches all the limitations set forth by the instant claims." (Office Action, April 14, 2009, page 3, paragraph 5, third full paragraph).

The specification as filed at paragraphs numbered [0024] through [0026] identify the sequences referenced in the instant application. SEQ ID NO:1 is a *native* sequence encoding an amino acid corresponding to SEQ ID NO:2, which would be the native Alfalfa antifungal protein. These are the only sequences referenced in the specification that would correspond to sequences that are inherently comprised within an endogenous gene encoding the antifungal protein isolated from an alfalfa plant and are not the subject of the rejected claims. SEQ ID NO:3 is a *recombinant* nucleotide sequence and not a native nucleotide sequence. SEQ ID NO:3 encodes the amino acid sequence corresponding to SEQ ID NO:4, an amino acid sequence *variant* alfalfa antifungal protein *that is not found in the native plant*, and which contains an amino acid modification at position 8 of the sequence, which was shown as set forth in the examples of the specification to provide a surprising level of increased antifungal activity when expressed in a transgenic plant. It is respectfully suggested that the Examiner has perhaps misread the specification as indicating that SEQ ID NO:4 corresponds to a native sequence, however, the facts as set forth in this paper are believed to fully rebut the Examiner's rejection based on the '496 patent. It is therefore respectfully requested that the rejection of claims 13-15 under 35 USC 102(b) be withdrawn and these claims be found to be in condition for allowance.

If there are any questions or minor amendments that can facilitate the allowance of the claims in this matter, it is respectfully requested that the Examiner contact the undersigned attorney.

Respectfully submitted,

/ Timothy K. Ball /
Timothy K. Ball, Ph.D., Esq.
Reg. No. 42,287
800 North Lindbergh Blvd., E1NA
St. Louis, Missouri 63167
(314) 694-5811
(314) 694-5311 (fax)